

United States Courts  
Southern District of Texas  
FILED

JUL 15 2015

David J. Bradley, Clerk of Court

In the United States Bankruptcy Court for the  
Southern District of Texas  
Houston Division

In Re  
Jane Kao  
f.k.a Jane Rashad

Debtor

No. 15-31193  
Chapter 13

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**MOTION TO DISQUALIFY COUNSEL**

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To The Honorable Letitia Z. Paul:

Movant pursuant to this court's inherent authority to supervise actions and attorneys pending before it, and the controlling corpa (the ethical rules) comprised of the

- Texas Rules of Disciplinary Conduct
- Local Rules
- ABA Model Rules
- Restatement (Third) of the Law Governing Lawyers

moves the court to enter an order disqualifying Mr. Haddock and attorneys of firm Pendergraft & Simon, LLP (P&S) from further representing creditor J. Michael Kelly in the above and related actions, due to conflicted prior representation of Movant. Such grounds are further detailed:

1. Contrary to ethical rules, attorneys at P&S represent Kelly whose interests are materially adverse to the interests of Movant, under many doctrines considered a former client of P&S, thus warranting firm's disqualification from representing Kelly in the above action.
2. Contrary to ethical rules, attorneys at P&S represent Kelly whose interests are materially adverse to the interests of Movant, having been a prospective client of P&S, thus warranting firm's disqualification from representing Kelly in the above action.
3. Contrary to ethical rules, attorneys at P&S were provided confidential information of Movant under cover of privilege during consultation. Access or use of such information continue to disadvantage Movant, real or perceived in the above and related actions, thus warranting firm's disqualification from representing Kelly.

4. Exceptions the ethical rules might allow, such as explicit waiver from Movant, has not be granted nor requested. Non-waiver based cures like Chinese Walls are deprecated and no longer considered sufficient protections.
5. On 5/14/2015, concurrence in the relief sought in this proceeding was requested of opposing counsel, Mr. Haddock by email, but no response was received thus necessitating this motion. Exhibit 1

Dated: 7/15/2015



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Mark Rosetta, in pro per  
9374 Briar Forest Dr  
Houston TX 77063  
646-403-4343



mark rosetta <marked@gmail.com>

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## Conflict

1 message

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marked@gmail.com <marked@gmail.com>  
To: will@haddock.pro

Thu, May 14, 2015 at 4:45 PM

Mr. Haddock,

We met yesterday, 2015-05-13, at the 341 meeting for Jane Kao, SDTX 15-31193.

At the meeting you said you were representing a party, Michael Kelly. You didn't at that time mention any firm name and didn't have business cards available.

It has since come to my attention that you're listed on the website of Pendergraft & Simon as an attorney of the firm. I'm sure this was an oversight or lax records, but if you're associated with Len Simon or Robert Pendergraft, your initial conflicts check for Michael Kelly should not have cleared. It is my understanding you were and continue to be obligated by bar rules to decline this representation.

Around 2012-09-10, during the prior bankruptcy, we spoke to Mr. Simon over the phone, seeking their employ and had received advice and cost estimates for litigation work needed at that time. We then met with Mr. Pendergraft in the offices at the AIG complex, in further expectation to retain, and additional details of outstanding litigation were disclosed. Mr. Pendergraft presented a differing view of the BK code than we needed, which caused a temporary pause. Contemporaneously, the trustee became persuaded by our view and agreed to prosecute from his position. This alleviated the need of your firm's employment on the matters in the short term.

I don't assume they remember as this was a one time meeting, but perhaps in person might boost one's recall.

It'd be prudent to review your conflicts database. Perhaps you failed to find Jane Kao fka Jane Rashad, but then also check Mark Rosetta, Garza [Maldonado] Properties, Vince[nt] Bustamante, Frank Salz, J Michael Kelly. I always provide these names when requested for conflicts check. Cases were SDTX 12-31484 and HCDC 2009-72907.

The parties and issues in the prior cases are the same as the current Bankruptcy and current, still pending, litigation. You've now indicated you're representing an adverse party, Michael Kelly. You were also seen conversing in private with another adverse party, Vince Bustamante, which he indicated was for the purpose of coordinating litigation strategy against

us.

I am personally writing you now in case you were not aware. I realize there are lots of people, facts, and law to get acquainted with in a short time. Since I am bringing it to your attention now though, I trust you are cognizant that communication with those two parties creates a worsening predicament, and are knowledgeable of your duties in such a situation.

Please notify me if the facts are unclear, so I can clarify or start locating records. Also if your duties are unclear, I can put you in touch with an attorney with expertise in these matters, or have them send you the controlling law.

Please confirm receipt of this message, so I know that you're looking into it.

Thank you for your attention to this,  
Mark Rosetta  
646-403-4343

### **Certificate of Service**

I hereby certify that a true and correct copy of the above Mark Rosetta's Motion to Disqualify Counsel has been served on the following counsel/parties of record in accordance with the FRBP 9013, BLR 9013, and local rules for ECF service on this 15<sup>th</sup> day of July 2015:

Counsel/parties appearing via ECF:

David L. Venable, Counsel for Debtor

William Heitkamp, Chapter 13 Trustee

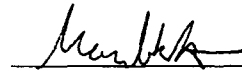
Office of the US Trustee

Richard Anthony Battaglia, Counsel for Garza Properties, LLC

John P. Dillman, Counsel for Harris County

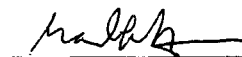
20 largest unsecured creditors and other parties requesting notice but not appearing via ECF:

County of Los Angeles Treasurer and Tax Collector PO BOX 54110 Los Angeles, CA 90054-0110	Ocwen Loan Serviceing, LLC Attn. Bankruptcy Department PO BOX 24605 West Palm Beach, FL 33416
IRS Centralized Insolvency Unit PO BOX 7346 Philadelphia PA 19101	William Haddock Pendergraft & Simon, LLP 2777 Allen Parkway, Suite 800 Houston, TX 77019
Frank Salz 2335 E Colorado Blvd Ste 115-400 Pasadena, CA 91107	

  
Mark Rosetta

### **Certificate of Conference**

I hereby certify, I attempted to contact opposing counsel, William Haddock, telephonically but was informed he was not available, on this 15<sup>th</sup> day of July 2015.

  
Mark Rosetta